12a. The court found that petitioner had failed to satisfy either of those requirements.

Petitioner contends (Pet. 13, 16) that the district court erred in conditioning his ability to demonstrate prejudice on the existence of a "formal" plea offer. The district court, however, did not rest its prejudice holding on the absence of a "formal" plea offer. Although the court observed that it was undisputed that no formal plea offer had been made, Pet. App. 12a, the court explained that "no specific offer was made *even informally*," *id.* at 13a (emphasis added), and that there was no discussion of the "details of the charges [petitioner] would plead to or the facts to which he would allocute," *ibid.* The court characterized the brief discussion between the prosecutor and trial counsel on a potential plea as "no more than perfunctory." *Ibid.* In addition, the court determined that, "[e]ven if a formal plea offer had been made, [petitioner] cannot demonstrate that there was even a reasonable probability he would have accepted." *Ibid.* The district court therefore did not rest its decision on the absence of a formal plea offer, and it did not hold that a formal plea offer was required to demonstrate prejudice.[3]

2. Petitioner argues (Pet. 16-17) that, because his trial counsel misunderstood the law of "willfulness," the district court should not have applied a presumption that counsel's performance was reasonable. There is no warrant for reviewing that claim for the threshold reason that, in light of the district court's ruling that petitioner failed to demonstrate prejudice, the court's dis-

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[3] Accordingly, there is no merit to petitioner's assertion (Pet. 13, 16) that the district court's (supposed) requirement of a formal plea offer conflicts with the Second Circuit's decision in *United States* v. *Gordon*, 156 F.3d 376 (1998).

cussion of counsel's performance was not necessary to the decision. See *Strickland*, 466 U.S. at 697 (explaining that courts need not address counsel's performance "[i]f it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so").

In addition, the district court did not accept petitioner's assertion that he misunderstood the meaning of "willfulness" because of the allegedly erroneous advice given to him by Bennett. The court instead concluded that petitioner's "suggestion that he believed that the government needed to prove he knew that PetroPlus was the taxpayer as a result of advice he received from Bennett is simply not credible." Pet. App. 16a; see *id.* at 18a ("Given this Court's doubts regarding [petitioner's] account of the evidence given him by Bennett, this Court cannot conclude that Bennett's performance was deficient."). The court further explained that the "suggestion that Bennett provided erroneous legal advice" was "contradicted by the evidence that [petitioner] himself dictated legal strategy to his lawyers * * * well before Bennett became involved with his case." *Ibid.*; see *id.* at 16a ("[I]t appears that [petitioner's] belief that the government needed to prove that he knew PetroPlus was the taxpayer *predates* any advice given to him by Bennett, and in fact, predates Bennett's involvement in the case."). This case thus presents no occasion for determining whether or how a presumption of reasonable performance applies when there has been a finding that the attorney misunderstood the law.[1]

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[1] Contrary to petitioner's assertion (Pet. 17), the district court did not hold that Bennett's diligence would excuse mistaken advice that he might have given. While the court observed that petitioner had not alleged that "Bennett's supposed mistake of law was due to a lack of

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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investigation or diligence." Pet. App. 16a, the court did not suggest that Bennett's diligence would excuse any mistake of law on his part.